

10/538,314

PATENT COOPERATION TREATY

PCT

REC'D 30 MAY 2005

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 20518/23-PCT	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/US03/00224	International filing date (day/month/year) 06 January 2003 (06.01.2003)	Priority date (day/month/year)
International Patent Classification (IPC) or national classification and IPC IPC(7): G01K 1/12 and US Cl.: 374/120,121,158,208; 600/121,474,184,186,549		
Applicant SHERWOOD SERVICES AG		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of ___ sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of report with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 23 July 2004	Date of completion of this report 23 May 2005
Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/ US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer Diego Gutierrez DEBORAH A. THOMAS PARALEGAL SPECIALIST Telephone No. 571/ 272-2253 GROUP 1300 <i>PCT</i>

Form PCT/IPEA/409 (cover sheet)(July 1998)

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/US03/00224

I. Basis of the report

1. With regard to the elements of the international application:*

- ☒ the international application as originally filed.
- ☒ the description:
pages 1-11 as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.
- ☒ the claims:
pages 12-15, as originally filed
pages NONE, as amended (together with any statement) under Article 19
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.
- ☒ the drawings:
pages 1-9, as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.
- ☐ the sequence listing part of the description:
pages NONE, as originally filed
pages NONE, filed with the demand
pages NONE, filed with the letter of _____.

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☒ The amendments have resulted in the cancellation of:

- ☒ the description, pages none
- ☒ the claims, Nos. none
- ☒ the drawings, sheets/~~fig~~ none

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

INTERNATIONAL PRELIMINARY EXAMINATION REPORTInternational application No.
PCT/US03/00224**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. STATEMENT**

Novelty (N)	Claims <u>7-16</u>	YES
	Claims <u>1-6, 7-20</u>	NO
Inventive Step (IS)	Claims <u>7-16</u>	YES
	Claims <u>1-6, 17-20</u>	NO
Industrial Applicability (IA)	Claims <u>1-20</u>	YES
	Claims <u>NONE</u>	NO

2. CITATIONS AND EXPLANATIONS

Please See Continuation Sheet

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

V. 2. Citations and Explanations:

Claims 1-6, 17-18 and 20 lack novelty under PCT Article 33(2) as being obvious over Fraden et al. (U.S. 57950670 [hereinafter Fraden]).

Fraden discloses in Figs. 3-5 a probe cover comprising a tubular body 21 having a proximal opening configured to receipt a distal end of a thermometer. The tubular body of the cover has a proximal end and a distal end. The distal end has a substantially arcuate shape. The distal end is enclosed in a film 10, the tubular body has a fold (rib) 16 at its distal end about inner circumference (circumferential edge). The fold 16 abuts against (engage with) a rim of the probe such that there is an air gap between the film/ window 10 and the distal end of the probe. Thus, the distal end of the probe is spaced from the window 10.

For claim 2: since the rib is of circumferential, in a broad sense, it can be considered that there are a lot of point ribs connected in between.

For claims 3-6: the rib/ fold 16 has a longitudinal portion (along the body/ parallel to the longitudinal axis) and a transverse portion (toward or perpendicular to the longitudinal axis of the body).

For claim 17: the tubular body is tapered from the proximal end to the distal end.

Claim 19 lacks novelty under PCT Article 33(2) as being obvious over WU (U.S. 6238088).

Wu discloses in Figs. 3-4 a device/ first probe cover having a tubular body of tapered configuration from a proximal end to a distal end, the distal end defines an opening to receipt a probe of a tympanic thermometer. The device also includes a body portion having a plurality of protuberances 15 being proximally spaced from the distal end and disposed circumferentially about a wall of said body portion. The protuberances are disposed on the outside surface and configured to nest a second probe cover on top of the first probe cover, the protuberances disposed on the inside surface are configured to nest the third probe cover when it inserted inside of the first probe cover, as shown in Fig. 4.

Claims 7-16 lack an inventive step under PCT Article 33(3) as being obvious over Fraden in view of Wu.

Fraden discloses the device as stated above.

Fraden does not explicitly teach ribs projecting from an inner surface and inner and outer protuberances, as stated in claims 7-16.

Wu discloses in Figs. 3-4 a device/ first probe cover having a tubular body of tapered configuration from a proximal end to a distal end, the distal end defines an opening to receipt a probe of a tympanic thermometer. The device also includes a body portion having a plurality of protuberances/ plurality of longitudinal ribs 15 being proximally spaced from the distal end and disposed circumferentially

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Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

about a wall of said body portion. The protuberances are disposed on the outside surface and configured to nest a second probe cover on top of the first probe cover, the protuberances disposed on the inside surface are configured to nest the third probe cover when it inserted inside of the first probe cover, as shown in Fig. 4.

Therefore, it would have not involved an inventive step to modify the device, disclosed by Fraden, so as to have more longitudinal ribs/ protuberances on inner and outer surface of the probe body, as taught by Wu, so as to provide nesting for other probes, in order to provide a compact and safe storage the cover probes when they are not placed on the probe.

NEW CITATIONS

F {
US 6,156,148 A (Beerwerth et al.) 05 December 2000
US 6,390,671 A (Tseng) 21 May 2002
US 5,795,067 A (Fraden et al.) 18 August 1998
US 6,195,581 A (Beerserth et al.) 27 February 2001
US 6,238,088 A (Wu) 29 May 2001
US 5,980,451 A (O'Hara et al.) 09 November 1999
US 6,139,182 A (Levatter et al.) 31 October 2000
US 6,022,140 A (Fraden et al.) 08 February 2000